



STATE OF TENNESSEE
Department of Financial Institutions
Compliance Division
414 Union Street, Suite 1000
Nashville, Tennessee 37219
615/741-3186

DEFERRED PRESENTMENT SERVICES LICENSE APPLICATION

Application is hereby made for a license pursuant to Chapter 309, Public Acts of 1997, to transact business as a Check Cashing Business.

1. Name of Applicant

Full exact name of person, corporation, partnership, sole proprietorship, or other entity, for which application is made.

Legal name of applicant, if different from above.

**2. Principal Place of Business
in Tennessee**

Number and Street Address

City County State Zip Code

Telephone Number Fax Number E-mail Address

Name of manager at this location

3. Federal Tax ID Number

**Social Security Number for Applicants
Applying as Individuals**

4. Mailing Address and Phone Numbers for:

Person responsible for matters relating to this application

Person responsible for responding to inquiries regarding the applicant:

Name and Title

Name and Title

Company

Company

Number and Street

Number and Street

City, State, Zip

City, State, Zip

() (800)

Phone Number(s)

() (800)

Phone Number(s)

Fax Number

E-Mail Address

Fax Number

E-Mail Address

5. Check and complete whichever is applicable:

(a) _____ **Individual doing business under own name:**

Number and Street Address for Residence

City

County

State

Zip Code

Telephone number for residence

(b) _____ **Individual doing business under assumed name (d/b/a):**

Number and Street Address for Residence

City

County

State

Zip Code

Telephone Number for Residence

(c) _____ **Corporation**

State of Incorporation/Organization _____ Date Incorporated _____

Parent Company, if applicable _____

Tennessee Secretary of State Corporate Identification Number _____. Attach a copy of the charter or certificate of incorporation. If a foreign corporation, attach a copy of certificate of authority to do business in Tennessee.

(d) _____ **Corporation Doing Business Under an Assumed Name (d/b/a).**

State of Incorporation/Organization _____ Date Incorporated _____

Parent Company, if applicable _____

Tennessee Secretary of State Corporate Identification Number _____. Attach a copy of the charter or certificate of incorporation. If a foreign corporation, attach a copy of certificate of authority to do business in Tennessee.

(e) _____ **Limited Liability Company:**

Attach a copy of the articles of organization and operating agreement along with amendments.

(f) _____ **Limited Partnership:**

Attach a copy of the certificate of limited partnership and the partnership agreement along with any amendments.

(g) _____ **General Partnership:**

Attach a copy of the partnership agreement along with any amendments.

(h) _____ **Trust:**

Attach a copy of the trust agreement along

(i) _____ **Franchise:(j)** _____ **Other:**

Attach a copy of the franchise agreement.

Please explain: _____

6. FEES. The filing fee is \$500. The filing fee of \$500 is applicable to each location. The filing fee is not subject to refund. However, if the license is granted, the filing fee shall constitute the license fee for the first license year or part thereof. The license expires on September 30. The license renewal date is September 1. **Make check payable to the Department of Financial Institutions.**

7. REGISTERED AGENT.

Name of Tennessee registered agent and title

Number and street address

City

County

State

Zip Code

Phone Number

Fax Number

E-Mail Address

8. BRANCH OFFICES. (\$500 filing fee for each branch must accompany application): Indicate N/A if there are no branch locations.

(a) _____
Name of Business

Phone Number

Number and Street Address

Fax Number

City, State, Zip Code

Manager

(b) _____
Name of Business

Phone Number

Number and Street Address

Fax Number

City, State, Zip Code

Manager

(c) _____
Name of Business

Phone Number

Number and Street Address

Fax Number

City, State, Zip Code

Manager

(d) _____
Name of Business

Phone Number

Number and Street Address

Fax Number

City, State, Zip Code

Manager

NOTE: Attach additional sheets if more than four branch locations.

9. OTHER OFFICES. Please provide the following information regarding other offices in Tennessee (other than those listed in question #8) at which a Deferred Presentment Service Business is or will be conducted that are affiliated with the applicant, or any owner, partner, L.L.C. member, director, officer, five percent (5%) or more shareholder or beneficiary (of a trust) of the applicant:

(a)	_____	_____
	Name of Business	Phone Number
	_____	_____
	Number and Street Address	Fax Number
	_____	_____
	City, State, Zip Code	Manager
(b)	_____	_____
	Name of Business	Phone Number
	_____	_____
	Number and Street Address	Fax Number
	_____	_____
	City, State, Zip Code	Manager
(c)	_____	_____
	Name of Business	Phone Number
	_____	_____
	Number and Street Address	Fax Number
	_____	_____
	City, State, Zip Code	Manager
(d)	_____	_____
	Name of Business	Phone Number
	_____	_____
	Number and Street Address	Fax Number
	_____	_____
	City, State, Zip Code	Manager

NOTE: Attach additional sheets if necessary.

- 10.** Provide a current list including the name, social security number, residence and business addresses, residence and business phone numbers, and title of each owner, partner, L.L.C. member, director, officer, five percent (5%) or more shareholder and beneficiary (of a trust) of the applicant.
- 11.** Provide a brief summary of the professional and educational background and experience of each person listed in response to questions #2, #8 and #10 (Resumes are acceptable).
- 12.** Provide a copy of a current **credit report** from a major credit bureau for the applicant and all persons listed in response to question #10. These credit reports must be dated within thirty (30) days prior to the date of the application. Provide an explanation of any negative information on the credit report.
- 13.** Is the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, L.L.C. members, directors, officers, five percent (5%) or more shareholder(s) or beneficiaries (of a trust) currently licensed and/or conducting business as a Deferred Presentment Services Business or similar type business in any other state(s)? Yes _____ No _____ If currently licensed or conducting business, please list the state(s) and the name and address of the business. If not currently licensed or conducting business, but have in the past, please list the state(s) and the name and address of the business, and add the time periods the applicant was licensed or conducted business.

14. Has the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, L.L.C. members, directors, officers, five percent (5%) or more shareholders or beneficiaries (of a trust) been indicted, convicted, pled guilty or pled nolo contendere to a felony in Tennessee or elsewhere? Yes _____ No _____ If yes, please explain fully.

15. Has the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, L.L.C. members, directors, officers, five percent (5%) more shareholders or beneficiaries (of a trust) been associated with a business whose authority to transact business was denied, revoked or suspended by a state or federal regulatory or law enforcement entity? Yes_____ No _____ If yes, please explain fully.

16. Has the Commissioner of Financial Institutions, any other agency of the State of Tennessee, any federal agency or any agency of any other state ever initiated a regulatory action or order against the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, L.L.C. members, directors, officers, five percent (5%) or more shareholders or beneficiaries (of a trust)? Yes _____ No _____ If yes, please explain fully.

17. Has the applicant, any of its parent companies, subsidiaries, affiliates, owners, partners, L.L.C. members, directors, officers, five percent (5%) more shareholders or beneficiaries (of a trust) ever applied for a license to the Commissioner of Financial Institutions, or any other state agency, to do business in the State of Tennessee. Include licenses for any company for whom applicant acts as an agent: Yes _____ No _____ If yes, provide copies of the licenses. List any applications withdrawn or denied.

18. Has the applicant, any of its parent companies, subsidiaries, affiliates, partners, L.L.C. members, directors, officers, five percent (5%) or more shareholder or beneficiaries (of a trust) been enjoined or restrained by order of any court from engaging in any conduct or practice related to the Deferred Presentment Services Business? Yes _____ No _____ If yes, please explain fully.

19. If the applicant is proposing to operate at a location where other business(es) is/are being conducted provide the name of the other business(es) and the type of business conducted.

20. **FINANCIAL STATEMENTS.** Provide a balance sheet and statement of income and expense for the immediately preceding fiscal year, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm. For a newly created entity, provide a balance sheet, accompanied by a projected income statement, demonstrating that the applicant will have adequate capital after payment of start-up costs.

21. Does the applicant have any contingent liabilities as endorser, or guarantor, or otherwise? Include all pending litigation, and note any potential settlement amounts that could significantly affect the applicant's financial condition. Yes _____ No _____ If yes, provide details in an addendum to this application.

22. (a) Provide the following information relative to Lines of Credit. Attach additional sheets if necessary. If none, indicate below.

<u>Name of Creditor</u>	<u>Total Amount of Line</u>	<u>Amount Outstanding</u>	<u>Expiration Date</u>
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((b) Does the applicant have other available funding sources? Yes _____ No _____ If yes, submit a detailed list.

23. NOTARIZATION

I, _____, a duly authorized officer of _____
Name of Officer

_____ certify under the penalties of perjury that all statements above, or
Name of Applicant

or attached hereto, are true to the best of my knowledge and belief.

Signature of Applicant or Authorized Officer

State of _____

County of _____

The following individual personally appeared before me:_____

who, being duly sworn according to law, deposes and says that the statements contained in the above application are true and correct.

Sworn and subscribed before me this _____ day of _____, _____.

Notary Public

NOTARY SEAL

BK-0238

CONFIDENTIAL BACKGROUND INFORMATION CONSENT FORM

By signing this consent, I understand and agree to the following:

The following information about me is necessary to assist the Department of Financial Institutions in evaluating the application of _____.
(Name of Applicant)

The information will be used to evaluate, among other things, my experience, character, business reputation, and general fitness.

I understand that omissions or inaccuracies in completing the application may result in denial of the application.

The Department may also conduct an independent investigation of me, which may include, but not limited to, contacting federal and state law enforcement agencies, other governmental agencies and credit reporting agencies. If any information the Department receives indicates a violation of law, the information will be shared with any agency responsible for the investigating or prosecuting the violation. If information about me would warrant denial of the application, the Department will give the applicant, through the person designated for contact, notice of the fact, including a statement of the statutory and factual basis which would warrant denial and applicant's rights in respect thereto.

First Name	MI	Last Name	Date of Birth
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Home Address	City	State	Zip Code
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Home Telephone Number _____

Driver's License Number	State	Social Security Number
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Other names by which I am now known or have used in the past:

Signature _____

Date _____

Chapter 17

Deferred Presentment Services

45-17-101. Short title. —
45-17-102. Chapter definitions. —
45-17-103. License requirement. —
45-17-104. Qualifications for license. —
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45-17-109. Reports to commissioner. —
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45-17-111. Regulations — Examinations. —
45-17-112. Retention of records — Operating costs — Deferred presentment procedures. —
45-17-113. Denial of license — Hearing. —
45-17-114. Suspension or revocation of licenses. —
45-17-115. Violations — Cease and desist orders — Penalties. —
45-17-116. Consent orders. —
45-17-117. Written complaint — Investigation — Subpoenas. —
45-17-118. Construction with other statutes. —
45-17-119. Annual reports. —

45-17-101. Short title. —

This chapter shall be known and may be cited as the “Deferred Presentment Services Act.”
[Acts 1997, ch. 255, § 2; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

Cross-References. Check cashing regulations, § 45-17-102.

Lottery retailers, § 4-51-115.

Negotiable instruments, title 47, ch. 3.

Cited: In re Brigance, 219 B.R. 486, 1998 Bankr. LEXIS 296 (Bankr. W.D. Tenn. 1998); Turner v. E-Z Check Cashing, Inc., 35 F. Supp. 2d 1042, 1999 U.S. Dist. LEXIS 2045 (M.D. Tenn. 1999).

Collateral References. Banks and Banking <key> 6.

45-17-102. Chapter definitions. —

As used in this chapter, unless the context otherwise requires:

(1) “Check” means a check signed by the maker and made payable to a person licensed under this chapter;

(2) “Commissioner” means the commissioner of financial institutions or the commissioner's designated representative;

(3) “Deferred presentment services” means a transaction pursuant to a written agreement involving the following combination of activities in exchange for a fee:

(A) Accepting a check dated on the date it was written; and

(B) Holding the check for a period of time prior to presentment for payment or deposit;

(4) “Department” means the department of financial institutions;

(5) “Licensee” means a person licensed to provide deferred presentment services pursuant to this chapter; and

(6) “Person” means an individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity.

[Acts 1997, ch. 255, § 3; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

Cited: In re Bagby, 218 B.R. 878, 1998 Bankr. LEXIS 416 (Bankr. W.D. Tenn. 1998); In re Brigrance, 219 B.R. 486, 1998 Bankr. LEXIS 296 (Bankr. W.D. Tenn. 1998).

45-17-103. License requirement. —

No person shall engage in the business of deferred presentment services without having first obtained a license. A separate license shall be required for each location from which the business is conducted.

[Acts 1997, ch. 255, § 4; 1999, ch. 14, § 1.]

Code Commission Notes.

The former last sentence of this section, concerning persons continuing to engage in the business of deferred presentment services without a license if application for licensure was filed by October 1, 1997, was deemed obsolete by the code commission in 2007.

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 amended Acts 1997, ch. 255, § 22, by deleting the repeal provisions and making the amendment effective on becoming law on March 17, 1999.

45-17-104. Qualifications for license. —

(a) To qualify for a license, an applicant shall satisfy the following requirements:

(1) The applicant shall have a minimum net worth determined in accordance with generally accepted accounting principles of at least twenty-five thousand dollars (\$25,000) available for the operation of each location; and

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this chapter, the commissioner may review and approve:

(A) The relevant business records and the capital adequacy of the applicant;

(B) The competence, experience, integrity and financial ability of any person who is a director, officer, or five percent (5%) or more shareholder of the applicant or owns or controls the applicant; and

(C) Any record, on the part of the applicant, or any person referred to in subdivision (2)(B), of any criminal activity, any fraud or other act of personal dishonesty, any act, omission or practice that constitutes a breach of a fiduciary duty or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

(b) The requirements set forth in subdivisions (1) and (2) are continuing in nature.

[Acts 1997, ch. 255, § 5; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

Section to Section References. This section is referred to in §§ 45-17-107, 45-17-110.

45-17-105. Application for license. —

Each application for a license shall be in writing and under oath to the commissioner, in a form prescribed by the commissioner, and shall include the following:

(1) The legal name, residence and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee and director thereof;

(2) The location in Tennessee at which the registered office of the applicant shall be located; and

(3) Other data and information the commissioner may require with respect to the applicant, its directors, trustees, officers, members, managing employees or agents.

[Acts 1997, ch. 255, § 6; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-106. Filing fees — Financial statements. —

(a) Each application for a license shall be accompanied by:

(1) A filing fee of five hundred dollars (\$500), which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof; and

(2) A balance sheet and income statement for the immediately preceding fiscal year end, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm. For a newly created entity, the commissioner may accept a balance sheet only, accompanied by a projected income statement demonstrating that the licensee will have adequate capital after payment of start-up costs.

(b) The filing fee set forth in subdivision (a)(1) shall be applicable to each location.

[Acts 1997, ch. 255, § 7; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be

repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

Section to Section References. This section is referred to in § 45-17-107.

45-17-107. Investigation — Issuance of license — Posting. —

(a) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in § 45-17-106, the commissioner shall investigate to ascertain whether the qualifications prescribed by § 45-17-104 have been satisfied. If the commissioner finds that the qualifications have been satisfied, and approves the documents, the commissioner shall issue to the applicant a license to engage in the deferred presentment services business in Tennessee.

(b) The license shall be kept conspicuously posted in the place of business of the licensee.

(c) A license issued pursuant to this section shall remain in force and effective through the remainder of the fiscal year ending September 30 after its date of issuance unless earlier surrendered, suspended or revoked pursuant to this chapter.

[Acts 1997, ch. 255, § 8; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-108. Nontransferability — Change in control of license. —

(a) A license issued pursuant to this chapter is not transferable or assignable.

(b) The prior written approval of the commissioner is required for the continued operation of a deferred presentment services business whenever a change in control of a licensee is proposed. “Control,” in the case of a corporation, means direct or indirect ownership, or the right to control, twenty-five percent (25%) or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. “Control,” in the case of any other entity, means the ability to change the principals of the organization, whether active or passive. The commissioner may require information deemed necessary to determine whether a new application is required. Costs incurred by the commissioner in investigating a change of control request shall be paid by the person requesting approval, subject to the limitations set forth in § 45-17-111.

(c) A licensee shall notify the department five (5) days before any change in the licensee's business location or name.

[Acts 1997, ch. 255, § 9; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-109. Reports to commissioner. —

Within fifteen (15) days of the occurrence of any one (1) of the events listed in subdivisions (1)-(6), a licensee shall file a written report with the commissioner describing the event and its expected impact on the activities of the licensee in this state:

- (1) The filing for bankruptcy or reorganization by the licensee;
 - (2) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority;
 - (3) The denial of the opportunity to engage in the deferred presentment services business by any state or governmental authority;
 - (4) Any felony indictment of the licensee or any of its directors, officers or principals;
 - (5) Any felony conviction of the licensee or any of its directors, officers or principals;
- and
- (6) Other events that the commissioner may determine and identify by rule.

[Acts 1997, ch. 255, § 10; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-110. Expiration of license. —

Licenses issued pursuant to this chapter shall expire on September 30. Each license may be renewed for the ensuing twelve-month period upon application by the license holder showing continued compliance with the requirements of § 45-17-104 and the payment to the commissioner annually, on or before September 1 of each year, a license renewal fee of five hundred dollars (\$500).

[Acts 1997, ch. 255, § 11; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-111. Regulations — Examinations. —

(a) The commissioner may promulgate reasonable regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the enforcement of this chapter. A copy of any rule or regulation adopted by the commissioner shall be mailed to each license holder at least thirty (30) days before the date it takes effect.

(b) To assure compliance with the provisions of this chapter, the commissioner may examine the relevant business, books and records of any licensee. The commissioner may charge and collect an examination fee of two hundred dollars (\$200) per day per examiner for any compliance examination conducted by the commissioner, which fee shall not exceed one thousand two hundred dollars (\$1,200) per year.

(c) The commissioner, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, is authorized to examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by the persons in the transaction of their business, and to summon witnesses and examine them under oath concerning matters relating to the business of the persons, or other matters that may be relevant to the discovery of violations of this chapter, including, but not limited to, the conduct of business without a license as required under this chapter.

[Acts 1997, ch. 255, § 12; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

Section to Section References. This section is referred to in § 45-17-108.

45-17-112. Retention of records — Operating costs — Deferred presentment procedures. —

(a) Each licensee shall keep and use in its business any books, accounts and records the commissioner may require to carry into effect the provisions of this chapter and the administrative regulations issued hereunder. Every licensee shall preserve the books, accounts

and records for at least two (2) years.

(b) A licensee may charge a fee to defray operational costs, including, but not limited to, investigating the checking account and copying required documents, photographing the person signing the check, securing the check and customer records in a safe, fire-proof place, maintaining records as required by this chapter, maintaining required capital and liquidity, processing, documenting and closing the transaction, and for other expenses and losses. The fee authorized by this subsection (b) shall not exceed the lesser of:

(1) Fifteen percent (15%) of the face amount of the check; or

(2) Thirty dollars (\$30.00). The fee, when made and collected, shall not be deemed interest for any purpose of law.

(c) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

(d) Any agreement for deferred presentment of a check must be in writing and signed by the maker of the check. The maker of a check shall have the right to redeem the check from the licensee before the agreed date of deposit upon payment to the licensee of the amount of the check. A licensee shall not defer presentment of any personal check for more than thirty-one (31) calendar days after the date the check is tendered to the licensee.

(e) Within five (5) business days after being advised by the payer financial institution that a check or draft has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee shall notify the district attorney general for the district in which the check was received. If a check or draft is returned to the licensee by the payer financial institution for any of these reasons, the licensee shall not release the check, draft or money order without the consent of the district attorney general or other investigating law enforcement authority.

(f) A licensee shall comply with all provisions of state and federal law regarding cash transactions and cash transaction reporting.

(g) A licensee shall provide each prospective customer, before consummation of the deferred presentment agreement, a written explanation, in clear, understandable language, of the fees to be charged by the licensee, and the date on which the check will be deposited or presented by the licensee. The commissioner may promulgate rules establishing additional requirements in order to assure complete and accurate disclosure. The department of financial institutions shall promulgate rules requiring each licensee to issue a standardized consumer notification and disclosure form in compliance with federal truth-in-lending laws prior to entering into any deferred presentment transaction. The required style, content and method of executing the form shall be specifically prescribed by the rules and shall be designed to ensure that the consumer, prior to entering into a deferred presentment transaction, receives and

acknowledges an accurate and complete notification and disclosure of the itemized and total amounts of all fees and other costs that will or potentially could be imposed as a result of the agreement. Enactment of this subsection (g) shall not create any inference that a particular method of disclosure was required prior to the October 1, 1997.

(h) A licensee shall issue a receipt to each person for whom a licensee defers deposit of a check. The receipt shall include the information described in subsection (g).

(i) If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee shall have the right to all civil means available and allowed by law to collect the check, including the right to collect court costs incurred in bringing the civil action as authorized in § 47-29-101(a)(4), (b) and (c) and shall further have the authority to assess a handling charge against the maker or drawer in the amount authorized by § 47-29-102; provided, only one handling charge may be collected with respect to any check, even if the check has been re-deposited and returned more than once; provided, however, that the licensee shall not have the right to collect attorney's fees relating to the check. No other provisions of title 47, chapter 29, are applicable to or for a licensee under this chapter. No individual who issues a personal check to a licensee under this chapter shall be convicted under the provisions of § 39-14-121.

(j) No licensee may alter or delete the date on any check accepted by the licensee. No licensee may accept an undated check or a check dated on a date other than the date on which the licensee accepts the check.

(k) No licensee shall engage in unfair or deceptive acts, practices or advertising in the conduct of the licensed business.

(l) Consistent with the nature of deferred presentment transactions, no licensee shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person.

(m) Each licensee must pay the full amount of any check cashed in cash or by check issued by the licensee, less only the fees permitted under this chapter. Payment by a licensee by means of a check shall not cause the licensee to be subject to the provisions of title 45, chapter 7, part 2.

(n) Each licensee shall display its license in a conspicuous location in its place of business and shall post a notice in a conspicuous location in its place of business containing a description of the charges imposed by the licensee.

(o) No licensee or any person related to the licensee by common ownership or control may have outstanding more than two (2) checks from any one (1) customer at any one (1) time, with the aggregate face value of all outstanding checks from any one (1) customer not to exceed five hundred dollars (\$500).

(p) Each licensee shall inquire of any person seeking deferred presentment services

regarding the person's outstanding checks from other licensees. If the customer represents in writing that the customer has no more than two (2) checks outstanding to any licensee or licensees and that the aggregate face value of all outstanding checks issued by the customer for deferred presentment does not equal or exceed five hundred dollars (\$500), a licensee may accept for deferred presentment a check in an amount that, when combined with the customer's other outstanding checks held for deferred presentment, does not exceed five hundred dollars (\$500), so long as the check for deferred presentment complies with subsection (o). If the customer represents in writing that the customer has three (3) or more checks outstanding to any licensee or licensees, or if the aggregate face value of all outstanding checks issued by the customer for deferred presentment equals or exceeds five hundred dollars (\$500), a licensee shall not accept another check for deferred presentment from that customer until the customer represents to the licensee in writing that the customer qualifies to issue a new check for deferred presentment in accordance with the preceding sentence. Each licensee may rely on a written representation of a customer regarding the existence of any outstanding checks for deferred presentment held by any licensee other than the licensee receiving the representation.

(q) A licensee shall not renew or otherwise consolidate a deferred presentment transaction with the proceeds of another deferred presentment transaction made by the same licensee. A transaction entered into in violation of this subsection (q) is void and unenforceable in law or equity.

(r) A licensee shall not use any device or agreement, including agreements with affiliated licensees, with the intent to obtain greater charges than otherwise would be authorized by this chapter.

[Acts 1997, ch. 255, § 13; 1999, ch. 14, § 1; 2001, ch. 5, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

Attorney General Opinions. Recovery of attorney fees and costs by deferred presentment service provider, OAG 98-070 (3/25/98).

Cited: In re Brigrance, 219 B.R. 486, 1998 Bankr. LEXIS 296 (Bankr. W.D. Tenn. 1998).

45-17-113. Denial of license — Hearing. —

(a) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(b) If the commissioner denies an application, or if the commissioner fails to act on an

application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted.

(c) Any hearing on the denial of a license shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In the hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant. A decision of the commissioner following any hearing on the denial of a license is subject to review under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

[Acts 1997, ch. 255, § 14; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-114. Suspension or revocation of licenses. —

(a) The commissioner may, after notice and hearing, suspend or revoke any license if the commissioner finds that the licensee has knowingly or through lack of due care:

(1) Failed to pay the annual license fee imposed by this chapter, or an examination fee imposed by the commissioner under the authority of this chapter;

(2) Has committed any fraud, engaged in any dishonest activities or made any misrepresentations;

(3) Has violated any provisions of this chapter or any administrative regulation issued pursuant to this chapter or has violated any other law in the course of the licensee's dealings as a licensee;

(4) Has made a false statement in the application for the license or failed to give a true reply to a question in the application; or

(5) Has demonstrated incompetency or untrustworthiness to act as a licensee.

(b) If the reason for revocation or suspension of a licensee's license at any one (1) location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee.

(c) A hearing shall be held on written notice given at least twenty (20) days prior to the date of the hearing and shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

[Acts 1997, ch. 255, § 15; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-115. Violations — Cease and desist orders — Penalties. —

If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or any administrative regulation issued pursuant thereto, the commissioner may:

(1) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant thereto;

(2) Require the refund of any fees collected by the person in violation of this chapter; and/or

(3) Order the person to pay to the commissioner a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this chapter or each day that a violation has occurred and continues.

[Acts 1997, ch. 255, § 16; 1999, ch. 14, § 1; 2001, ch. 165, § 21.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-116. Consent orders. —

(a) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule, regulation or order promulgated or issued under this chapter has been violated, nor need it constitute a finding by the commissioner that the person has violated any provision of this chapter or any rule, regulation or order promulgated or issued under this chapter.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken that is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action.

[Acts 1997, ch. 255, § 17; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-117. Written complaint — Investigation — Subpoenas. —

(a) Any person aggrieved by the conduct of a licensee under this chapter in connection with the licensee's regulated activities may file a written complaint with the commissioner who may investigate the complaint.

(b) In the course of the investigation of the complaint, the commissioner may:

(1) Subpoena witnesses;

(2) Administer oaths;

(3) Examine any individual under oath; and

(4) Compel the production of records, books, papers, contracts or other documents relevant to the investigation.

(c) If any person fails to comply with a subpoena of the commissioner under this chapter or to testify concerning any matter about which the person may be interrogated under this chapter, the commissioner may petition any court of competent jurisdiction for enforcement.

(d) The license of any licensee under this chapter who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.

(e) The commissioner shall have exclusive administrative power to investigate and enforce any and all complaints filed by any person that are not criminal in nature, which complaint relates to the business of deferred presentment services.

[Acts 1997, ch. 255, § 18; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be

repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-118. Construction with other statutes. —

The business of deferred presentment services conducted in accordance with this chapter shall not be subject to or controlled by any other statute governing the imposition of interest, fees or loan charges, including but not limited to, § 47-14-104. A licensee shall not have the powers enumerated in this chapter without first complying with the law regulating the particular transaction involved, but licensees legally exercising any of the powers set forth in this chapter shall not be deemed in violation of §§ 47-9-610, 47-14-112, 47-14-115 and 47-14-117.

[Acts 1997, ch. 255, § 19; 1999, ch. 14, § 1; 2000, ch. 846, § 29.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

45-17-119. Annual reports. —

(a) Each licensee shall file an annual report with the commissioner by September 1 of each year, containing the following information:

- (1) The names and addresses of persons owning controlling interest in each licensee;
- (2) The location of all places of business operated by the licensee and the nature of the business conducted at each location;
- (3) The names and addresses of all affiliated entities regulated under title 45, doing business in this state;
- (4) Balance sheets, statements of income and expense, and other statistical information that may be reasonably required by the commissioner, consistent with generally accepted accounting practices, for the purpose of determining the general results of operations under this chapter; and
- (5) If the licensee is a corporation, the names and addresses of its officers and directors, or if the licensee is a partnership, the names and addresses of the partners, or if the licensee is a limited liability company, the names and addresses of the board of governors of the limited liability company.

(b) If the licensee holds two (2) or more licenses or is affiliated with other licensees, a composite report may be filed, but may not be required.

(c) The reports shall be filed in a form that may reasonably be required by the commissioner and shall be sworn to by a responsible officer of the licensee.

(d) The information submitted by licensees pursuant to this section shall be afforded the same degree of confidentiality by the department and the commissioner as is applicable to reports filed by industrial loan and thrift companies pursuant to § 45-5-503.

(e) The commissioner shall prepare and submit to the governor and general assembly, annually, an analysis and recapitulation of the reports for the preceding calendar year for the purpose of reflecting the general results of operations under this chapter.

[Acts 1997, ch. 255, § 20; 1999, ch. 14, § 1.]

Compiler's Notes. Acts 1997, ch. 255, § 22 provided that §§ 45-17-101 — 45-17-119 were to be repealed at 12:01 a.m. October 1, 1999; however, Acts 1999, ch. 14, § 1 deleted the repeal provisions in Acts 1997, ch. 255, § 22, effective March 17, 1999.

Cross-References. Confidentiality of public records, § 10-7-504.

Reporting requirements satisfied by notice to general assembly members of publication of report, § 3-1-114.

Chapter 0180-28. RULES PERTAINING TO THE DEFERRED PRESENTMENT SERVICES ACT

§ 0180-28-.01. CONSUMER DISCLOSURES.

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§ 0180-28-.01. CONSUMER DISCLOSURES.

(1) Purpose. In enacting Public Chapter 255. Acts of 1997, specifically Section 13(g), the General

Assembly expressed its intention to promote the informed use of consumer credit by requiring that,

prior to entering into a deferred presentment services transaction, a deferred presentment services

licensee provide a consumer with an accurate and complete disclosure of the itemized and total amounts of all fees and other costs that will or potentially could be imposed as a result of such agreement. The purpose of this chapter is to specify the style, content and method of executing the

form of the disclosures ha a deferred presentment licensee must provide to a consumer.

(2) Scope. The provisions of this rule apply to every deferred presentment services transaction entered into

under the Deferred Presentment Services Act.

(3) Disclosures.

(a) Prior to entering into any deferred presentment services transaction, a deferred presentment services licensee shall provide he consumer a notification and disclosure form containing the itemized and total amounts of all fees and other costs that will or potentially could be imposed as a result of such agreement.

(b) The style, content and method of executing the notification and disclosure form required by this Rule 0180-28-.03 shall comply with the Federal Truth in Lending Act (15 U.S.C. § 1601 *et seq.*) and the regulations promulgated thereunder, known as the Federal Reserve Board's Regulation Z (12 C.F.R. pt 226).

(c) Prior to entering into the deferred presentment services transaction, the deferred presentment services license shall ensure that the consumer receives and acknowledges in writing the receipt of the notification and disclosure form.

Authority: *Public Chapter 255. Acts of 1997, Sections 13(g) and 12(a) and T.C.A. § 45-1-107.*

Administrative History: Original rule field June 30, 1997; effective October 28, 1997.